

3 THE HONORABLE ROBERT J. BRYAN
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

12 ECKHARD BERNARDY,

Plaintiff,

13 -v.-

No. C04-5604 RJB

14 ROBERT A. POWELL,

CONSENT JUDGMENT

15 Defendants.

16 Plaintiff, Eckhard Bernardy, filed this civil action against Defendant Robert A.
17 Powell pursuant to 35 U.S.C. § 146, regarding claims 1 through 4 of U.S. Patent
18 5,875,700 (hereinafter referred to as the '700 patent) and claims 42-59 of U.S. Patent
19 Application 09/035,936 (hereinafter referred to as the '936 application), following a final
20 decision by the Board of Patent Appeals and Interferences granting priority to
21 Defendant. The Complaint alleged that Plaintiff was the sole, true inventor of the
22 subject matter described by claims 1-4 of U.S. patent '700 and claims 42-59 of U.S.
23 patent application '936; that the '700 patent was invalid; and that Plaintiff was entitled to
24 equitable relief of restitution, accounting, and disgorgement.
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26 The parties stipulate to the entry of this Judgment in resolution of this suit and
27 interference.
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CONSENT JUDGMENT--1



3 This Court now being fully advised in the premises does now Order, Adjudge and
4 Decree as follows:

5 1. This Court has jurisdiction over the parties under 28 U.S.C. §§1338,
6 1651, 2201, 2202, and as an action arising under laws of the United States, including 35
7 U.S.C. § 146 and 37 C.F.R. § 1.303-4, and venue over the parties under 28 U.S.C.
8 §1391.

9 2. Plaintiff Bernardy is the true, first, original and sole inventor of the
10 invention claimed in claims 1 through 4 of U.S. Patent 5,875,700 (hereinafter referred to
11 as the '700 patent) and claims 42-59 of U.S. Patent Application 09/035,936 (hereinafter
12 referred to as the '936 application), and is therefore entitled to priority as the inventor,
13 pursuant to Sections 146, 102(f), and 102(g)(1) & (2) of the Patent Act, Title 35, United
14 States Code.

15 3. That the '700 patent is invalid under 35 U.S.C. § 102(f) as derived from
16 the Bernardy invention described in the '936 application.

17 4. That Defendant Powell, his agents, employees, successors, assigns and
18 all those in privity with said Defendant or acting on his behalf or under his control are
19 permanently enjoined from directly or indirectly making, , selling, or causing to be sold
20 apparatus or devices embodying the invention claimed in claims 1 through 4 of the '700
21 patent or claims 42-59 of the '936 application.

22 5. That Defendant Powell will execute an assignment of all right and title to
23 Canadian Patent Application CA 2209054 titled "Monocoque Pruning, Mulching and
24 Cutting Blade," and any patents issuing therefrom, as well as executing any papers
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3 needed to be filed with the Canadian Intellectual Property Office to make such
4 assignment effective.

5 6. This Court shall retain jurisdiction and venue over the parties with regard
6 to the Settlement Agreement which the parties have entered.

7 7. All other parties and claims are dismissed with prejudice.

8 8. Each party shall bear its own costs and attorney's fees.

9 10. An original copy of this judgment and order will be filed with the Director of
11 the Patent and Trademark Office.

12 SO ORDERED AND ADJUDGED:

14 Date

15 Robert J. Bryan
16 United States District Judge

STIPULATED TO, AGREED TO AND APPROVED
AS TO FORM:

ECKHARD BERNARDY, PLAINTIFF

10/28/05

Date

Eckhard Bernardy, Plaintiff

11/1/05

Date

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Of Attorneys for Eckhard Bernardy

ROBERT A. POWELL, DEFENDANT

10/25/05

Date

Robert A. Powell

10/26/05

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